

ENTERED

May 26, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ROBERTO MONTES, JR.,	§	
	§	
VS.	§	CIVIL ACTION NO. 5:21-CV-38
	§	CRIMINAL ACTION NO. 5:18-CR-287
UNITED STATES OF AMERICA	§	

ORDER

Petitioner Roberto Montes, Jr., has moved for habeas relief under 28 U.S.C. § 2255 (Dkt. Nos. 1, 2, 7, 37).¹ At this juncture, the Court has dismissed two of his habeas claims and two remain pending (Dkt. No. 38). The two pending issues are whether Petitioner's attorney rendered ineffective assistance of counsel (IAC) and whether Petitioner's statute of conviction, 18 U.S.C. § 922(g)(1), which prohibits a felon from possessing a firearm, violates the Second Amendment (*id.*). For the reasons below, both claims are **DISMISSED WITH PREJUDICE**.

After the Court referred Petitioner's IAC arguments to the Magistrate Judge, the Magistrate Judge issued a Report and Recommendation, which was superseded by an Amended Report and Recommendation (Dkt. Nos. 31, 39). The Amended Report recommends dismissing Petitioner's IAC claims, granting the Government's motion for summary judgment, and denying a certificate of appealability (Dkt. No. 39). Petitioner's deadline to object lapsed on April 18, 2023 (Dkt. Nos. 39, 44). To date, Petitioner has not filed any objections. Nor has he filed a motion to extend his deadline. Accordingly, he has waived his right to a *de novo* review of the Amended Report. *See* 28 U.S.C. § 636(b)(1)(C).

¹ All docket citations refer to entries in Civil Action No. 5:21-cv-38.

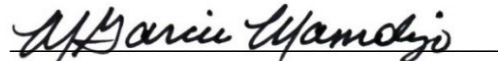
Having reviewed the record, the Amended Report, and applicable authorities, the Court discerns no clear error. The Amended Report's analysis and conclusions are hereby **ADOPTED**. Petitioner's IAC claims are **DISMISSED WITH PREJUDICE**. The Government's motion for summary judgment (Dkt. No. 26) is **GRANTED**.

The Court will also dismiss Petitioner's Second Amendment challenge. Essentially, Petitioner argues the felon-in-possession statute is unconstitutional in light of the Supreme Court's decision in *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (Dkt. Nos. 30, 37). To date, at least thirteen in-Circuit district judges have rejected this argument.² Today, the undersigned joins these judges. Petitioner's convicting statute is constitutional, and his Second Amendment claim is **DISMISSED WITH PREJUDICE**.

Finally, a certificate of appealability is **DENIED** as to Petitioner's IAC and *Bruen* claims. The Court will enter final judgment under separate cover.

It is so **ORDERED**.

SIGNED May 26, 2023.


Marina Garcia Marmolejo
United States District Judge

² See *United States v. Stewart*, No. 4:23-cr-105, 2023 WL 3313053 (N.D. Tex. May 8, 2023) (Pittman, J.); *United States v. Thompson*, No. 2:22-cr-173, 2023 WL 3159617 (E.D. La. Apr. 27, 2023) (Ashe, J.); *United States v. Mendez*, No. 2:22-cr-656, 2023 WL 3097243 (S.D. Tex. Apr. 26, 2023) (Tipton, J.); *United States v. Barber*, No. 4:20-cr-384, 2023 WL 1073667 (E.D. Tex. Jan. 27, 2023) (Jordan, J.); *ShIPLEY v. Hajar*, No. 3:23-cv-11, 2023 WL 353994 (W.D. Tex. Jan. 20, 2023) (Cardone, J.); *United States v. Jordan*, No. 3:22-cr-1140, 2023 WL 157789 (W.D. Tex. Jan. 11, 2023) (Guaderrama, J.); *Davis v. United States*, Nos. 4:22-cv-1000, 4:19-cr-80, 2023 WL 129599 (N.D. Tex. Jan. 9, 2023) (O'Connor, J.); *United States v. Grinage*, No. 5:21-cr-399, 2022 WL 17420390 (W.D. Tex. Dec. 5, 2022) (Pulliam, J.); *United States v. Cage*, No. 3:21-cr-68, 2022 WL 17254319 (S.D. Miss. Nov. 28, 2022) (Johnson, J.); *United States v. Hill*, No. 4:22-cr-249, 2022 WL 17069855 (S.D. Tex. Nov. 17, 2022) (Hughes, J.); *United States v. Banuelos*, No. 3:22-cr-903, 2022 WL 17752205 (W.D. Tex. Nov. 10, 2022) (Montalvo, J.); *United States v. Charles*, No. 7:22-cr-154, 2022 WL 4913900 (W.D. Tex. Oct. 3, 2022) (Counts, J.); *United States v. Cockerham*, No. 5:21-cr-6, 2022 WL 4229314 (S.D. Miss. Sept. 13, 2022) (Bramlette, J.).